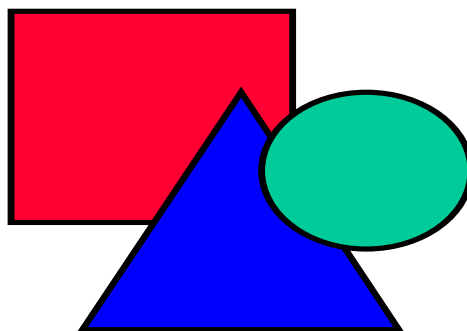




Internal Audit Report

Office of the Public Defender
January 2001



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Executive Summary

Caseload Management (Page 9)

PD uses the Client Records Management System (CRMS) to manage cases and assign attorney caseload. The caseload data available from CRMS is inaccurate, due primarily to time delays from information received from Superior Court. In addition, the data available from the system does not provide sufficient detail to effectively assign cases. PD is aware of the system's deficiencies and has begun to take the necessary steps to address the problems noted. The office should continue with the corrective actions currently in progress.

Office Operations (Page 11)

PD effectively manages its administrative functions and operations, including payroll processing, grant funding, fixed asset tracking, employee travel and training expenses, and transcription expenses. However, we found internal controls could be strengthened in the areas of payroll reconciliation, fixed asset tracking, and expense processing. PD should enhance procedures in these areas to improve internal controls and better safeguard County resources.

Trust Fund Administration (Page 13)

PD maintains a trust fund account that is administered on behalf of clients for expenses such as expert witness fees. Rules for administering client trust funds state that trust fund monies are to be maintained separately from personal or departmental monies. Unclaimed monies, which cannot be returned to the rightful owners, should be escheated to the state after five years. We found non-trust fund transactions that had been processed through the account and that the current balance includes unclaimed funds over five years old. PD should take actions necessary to ensure that the fund is used for its intended purpose and complies with the requirements set forth by the ARS and Arizona Rules of Court.

Attorney Licenses (Page 15)

Attorneys hired by the PD office report their status as members of the State Bar of Arizona (Bar) at the time of hire. The PD office relies on Bar determinations when verifying attorneys' reported information relating to licenses, misconduct charges, and sanctions. This information is reviewed annually in conjunction with attorney license renewals and Bar dues payments. PD procedures appear to be adequate to ensure compliance with attorney license requirements, as stipulated by the Bar and the courts.

Program Change Controls (Page 16)

PD has not developed a formal process to ensure that all program changes are properly authorized, tested, and approved by the requestor. Also, the programmer making a change is responsible for moving the change into production. This same person has database administrator responsibilities, which according to best practices, should be performed by a different individual. This security risk is compounded by a lack of staff backup, which could negatively impact service continuity. These control weaknesses increase the risk that improper program changes could be implemented. PD should adopt a formal program change control process, ensure that critical information technology job duties are properly segregated, and establish backup for key technology positions.

User Access Controls (Page 18)

User access to the PD's Client Records Management System appears to be adequately restricted based on current job responsibilities. The PD also has a security policy that covers confidentiality of data, as well as, provides adequate protection and composition of passwords.

Disaster Recovery Planning (Page 19)

The PD does not have a documented and tested disaster recovery plan to recover its systems in the event of a disaster or extended system outage due to hardware or software problems. In addition, system backup tapes were not rotated off-site when we began our audit. However, action was taken to correct this situation during the audit. The PD does not have assurance that it can recover its systems timely to prevent potential business interruptions. The PD should develop and document a disaster recovery plan and test the plan at least annually.

Introduction

Background

According to the 6th amendment to the US Constitution, those accused in criminal prosecutions, "...shall enjoy the right to have assistance of counsel for his defense." This right was affirmed for states in the landmark case of Gideon vs. Wainwright in a Supreme Court opinion handed down in 1963. This court opinion established the right to counsel for those people who can not afford their own legal representation. The Maricopa County's Public Defender's Office (PD) was established in 1965, as a result of the Supreme Court decision.

The purpose of PD is to provide indigent individuals of the County with an effective option for legal representation. PD is the first office assigned a case, based on a financial determination process administered by the courts. Defendants who can not be represented by PD, due to resource limitations or conflicts of interest, are diverted to the Office of Legal Defender (OLD), Office of Contract Counsel (OCC), and Office of Legal Advocate (OLA). Together these offices make up the County's Indigent Representation function.

The County's Public Defender is appointed by the Board of Supervisors as authorized by Arizona Revised Statutes (ARS) §11.581. The Public Defender must be a licensed attorney 'in good standing' within the state of Arizona to qualify for the position. The PD consists of over 400 employees, including 226 attorneys.

Mission

PD has developed the following Mission Statement: "The Office of the Public Defender protects the fundamental rights of all individuals, by providing effective legal representation for indigent people facing criminal charges, juvenile adjudication, dependency and severance proceedings, and mental health commitments, when appointed by Maricopa County Superior and Justice Courts."

Goals

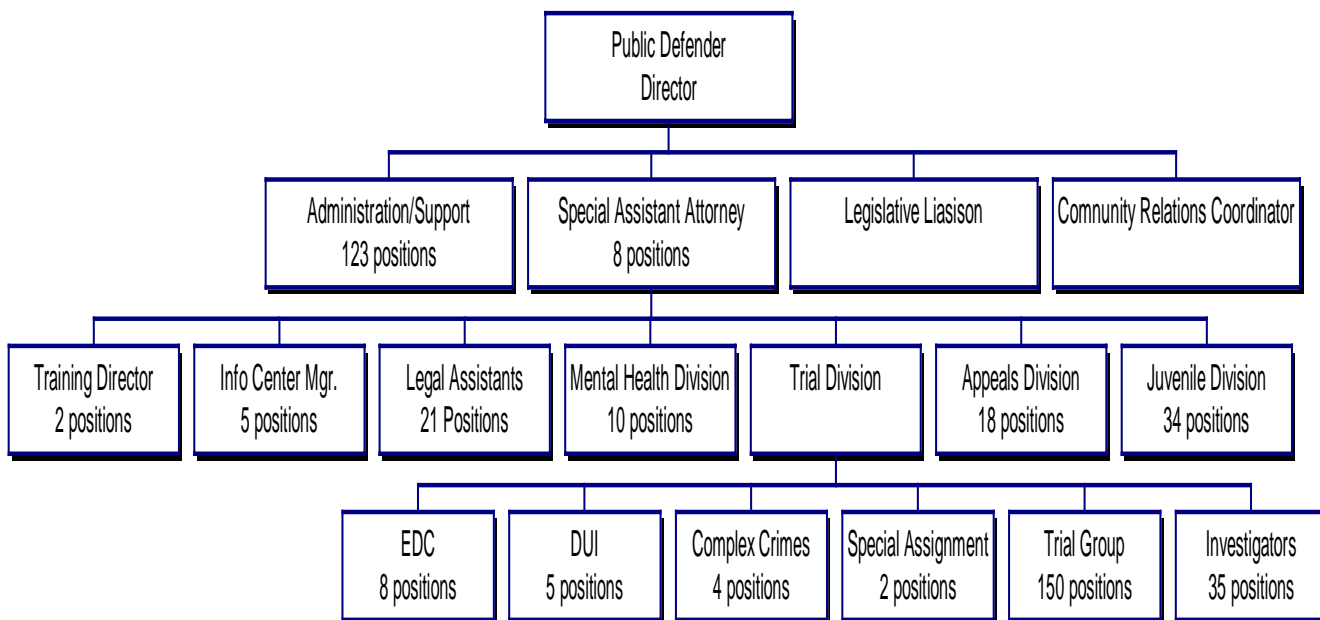
PD has established the following strategic goals:

- To protect the rights of our clients and guarantee that they receive equal protection under the law, regardless of race, creed, national origin or socio-economic status;
- To obtain and promote dispositions that are effective in reducing recidivism, improving clients' well being and enhancing quality of life for all;
- To ensure that all ethical and constitutional responsibilities and mandates are fulfilled;
- To enhance the professionalism and productivity of all staff;
- To produce the most respected and well-trained attorneys in the criminal defense community;
- To work in partnership with other agencies to improve access to justice and develop rational justice system policies;
- To achieve recognition as an effective and dynamic leader among organizations responsible for legal representation of indigent people;
- To perform our obligations in a fiscally responsible manner.

Organizational Structure

The majority of PD staff are licensed attorneys, whose primary function is to provide citizens with quality legal representation. The department's other functions provide support services for the attorneys. The chart on the following page depicts PD's current organizational structure.

Public Defender Organization



Trial Division

The Trial Division is made up of 140 attorneys and handles felonies, misdemeanors, and probation violations for the adult criminal justice system. Felony cases comprise approximately 80 percent of the caseload.

Juvenile Division

The Juvenile Division represents children between the ages of 8 and 18 who have had a petition filed against them as a result of a delinquent act or other offense. The PD litigates the majority of juvenile cases in Maricopa County. If a conflict of interest exists, juvenile cases are typically transferred to OCC.

Appeals Division

The Appeals Division files direct appeals and Post Conviction Relief (PCR) appeals on behalf of the Trial and Juvenile divisions.

Mental Health Division

The Mental Health Division provides legal counsel in civil proceedings involving commitment hearings and judicial reviews. The division represents patients who have been committed for psychiatric evaluation and treatment. The objective in representing clients in these court hearings is to ensure that patients receive a fair hearing, and, ultimately, receive the treatment they need.

Methodology and Scope

The scope of this audit included objectives designed to determine PD's:

- Compliance with laws and regulations
- Effectiveness of program operations
- Validity and reliability of data, and
- Safeguarding of resources.

This audit was performed in accordance with Government Auditing Standards.

Department-Reported Accomplishments

The following accomplishments were provided to the Internal Audit Department by PD management for inclusion in this report.

- **Cost per Case** - The Public Defender is constantly struggling to manage costs while providing quality legal representation. Despite changes in the economy and the employment market, the Public Defender has managed to maintain an overall cost per case of \$613.84, one of the lowest in the country for several years.
- **Staffing Study** - Reasonable support staff ratios must be maintained to provide efficient and effective services. The Office recently conducted an exhaustive internal study that confirmed the need for attention in that area and resulted in authorization of 36 new support positions.
- **Productivity Study** - The Public Defender retained Policy Studies, Inc. (PSI), a management consulting firm, to help management evaluate methods for improving its operations. The consultant team was comprised of several nationally known and respected experts in the criminal justice field. The study, which focused on internal and external issues, resulted in numerous recommendations, the implementation of which is expected to improve case processing and enhance the representation provided to Public Defender clients.
- **Performance Measures** - The Office has been the driving force of Indigent Representation's strategic planning processes. The Public Defender organized a team to revamp the attorney performance evaluation. The Public Defender's Office is among the first in the nation to tackle the subject of quantifying performance and relating it to the evaluation process.
- **Bilingual Skills Compensation** - The Public Defender implemented a limited "premium pay program" to compensate staff who consistently use their bilingual skills in the performance of their duties. The program, which will expand as additional funds become available, enhances the ability to attract and retain qualified bilingual staff.
- **Community Relations** - The Public Defender Community Relations Coordinator position was created to serve as outreach and community affairs liaison and ombudsman.
- **New Procedures to Facilitate Case Processing** - The Public Defender's Office adopted several new procedures including one that addresses the need for full and early discovery, one that results in early identification and interview of witnesses, and one that provides attorneys with weekly alerts of plea cut-off deadlines. Also initiated was a horizontal representation pilot project to meet the demands of Rule 8, without compromising our obligations.
- **Technology** - IT staff spent most of calendar 1999 preparing for the Y2K rollover. Activities included equipment replacement/upgrading and migration of record's database to a new client/server platform. Also, staff migrated all systems to MS Office. An IT internship program was established with a local Community College. Appeals attorneys received notebook computers and remote access for telecommuting purposes. Many in-house training sessions were conducted, producing savings by reducing reliance on outside training. Connections were established to obtain data from the Courts, and a "palm-pilot" program was initiated to improve attorney scheduling.

Issue 1 Caseload Management

Summary

PD uses the Client Records Management System (CRMS) to manage cases and assign attorney caseload. The caseload data available from CRMS is inaccurate, due primarily to time delays from information received from Superior Court. In addition, the data available from the system does not provide sufficient detail to effectively assign cases. PD is aware of the system's deficiencies and has begun to take the necessary steps to address the problems noted. The office should continue with the corrective actions currently in progress.

Applicable Requirements

According to *Guideline 1.3- General Duties of Defense Counsel*, published by the National Legal Aid & Defender Association, attorneys have an obligation to ensure that they have sufficient time, resources, knowledge, and experience to provide a defendant with quality representation. In addition, the Smith standard, handed down by the Arizona Supreme Court in the *State of Arizona vs. Joe U. Smith*, establishes baseline limits of annual caseloads per attorney, for various types of proceedings.

Assigning Caseloads

Managing attorney caseloads is extremely difficult due to a high degree of variability between court cases. Cases where defendants are charged with the same offense can vary widely in complexity and resource requirements. The data currently available from PD's tracking system does not provide sufficient detail for supervisors to effectively assign and balance the workload among attorneys. Supervisors in the Trial Groups have devised alternative methods for tracking case assignments. These methods involve spreadsheet applications and manual logs, which can be inaccurate as well as time-consuming.

Sufficient data is needed to ensure individual attorney's caseloads are manageable and that the department caseload is assigned equitably and efficiently. An unbalanced caseload can result in inefficient use of County resources and have a negative impact on the quality of representation.

System Weaknesses and Corrective Actions

CRMS does not currently provide the level of detail needed to effectively assign cases. The system was developed in-house eleven years ago and PD does not have sufficient technical support to meet the needs of department end-users. In addition, Superior Court related time delays are a significant contributing factor to the issues noted.

The PD's office is aware of the CRMS system issues and has recently contracted with outside consultants to monitor and evaluate the productivity of the office. The consultants have made a number of recommendations, including measures needed to promote an effective case weighting system. The PD's office has already taken steps to implement these recommendations.

Recommendation

We concur with the issues highlighted by PD's consultants and recommend the office continue the corrective action currently in progress.

Issue 2 Office Operations

Summary

PD effectively manages its administrative functions and operations, including payroll processing, grant funding, fixed asset tracking, employee travel and training expenses, and transcription expenses. However, we found internal controls could be strengthened in the areas of payroll reconciliation, fixed asset tracking, and expense processing. PD should enhance procedures in these areas to improve internal controls and better safeguard County resources.

Applicable Requirements

The American Institute of Certified Public Accountants' (AICPA) auditing standards establishes elements of an effective system of internal controls. These elements include:

- Segregation of duties in payroll processing activities
- Review of the payroll by an employee not involved in its preparation
- Effective recordkeeping for fixed assets, including periodic physical inventories with appropriate reconciliation of fixed asset records
- Examination of goods for completeness and quality, and
- Approval of invoices and payment vouchers by a senior employee.

In addition, the Department of Finance (DOF) Property Manual and the County's travel policies provide specific direction for administering fixed assets, and requirements for travel-related expenditures, respectively.

Payroll Processing

Overall, we found that payroll is processed correctly and that PD payroll procedures include effective internal controls. However, we noted that duties are not adequately segregated as the same employee enters detailed payroll data and reconciles system output. In addition, department management does not approve final payroll records. Non-segregated payroll duties, without appropriate supervisory approvals, increase the risk that errors or irregularities can occur without detection.

Fixed Asset Accounting

We found three significant discrepancies while matching DOF records to PD fixed assets on hand. Two exceptions resulted from assets that had been transferred from PD premises without appropriate paperwork. As a result, PD assets recorded by DOF were overstated by more than \$47,000. We also found an asset without a fixed asset tag that, therefore, was not reconciled to DOF's list. Weak internal controls over fixed assets increases the risk of undetected loss of County property.

Expense Processing

We tested the significant court transcript and travel-related expenditures. We found that three (10%) of thirty transcript invoices were not approved for payment. This resulted in one invoice being paid twice in error.

Our review of travel-related expenditures indicated several minor exceptions to the County's travel policies. These include omission of required waivers for hotel costs and rental vehicles and the lack of approval for one travel reimbursement. Ineffective review and approval of invoices increase the risk that errors or irregularities can occur without being detected.

Causes for Exceptions

PD staff were not aware of the importance of segregating payroll activities. In addition, although staff were aware of DOF procedures and County policies, these policies were not carried out consistently. Part of the problems noted with the travel expenditures was attributable to departmental personnel change.

Recommendation

PD should:

- A. Assign an individual, independent of payroll processing, to reconcile payroll output to payroll input. The final payroll should have evidence of supervisory approval.
- B. Strengthen controls over fixed asset records and work with DOF to correct records to ensure compliance with County policy requirements.
- C. Ensure that all transcript invoices (appeal and non-appeal related) are approved before being presented for payment.

Issue 3 Trust Fund Administration

Summary

PD maintains a trust fund account that is administered on behalf of clients for expenses such as expert witness fees. Rules for administering client trust funds state that trust fund monies are to be maintained separately from personal or departmental monies. Unclaimed monies, which cannot be returned to the rightful owners, should be escheated to the state after five years. We found non-trust fund transactions that had been processed through the account and the current balance includes unclaimed funds over five years old. PD should take actions necessary to ensure that the fund is used for its intended purpose and comply with the requirements set forth by ARS and Arizona Rules of Court.

Applicable Requirements

Rules 43 and 44 of the Arizona Rules of the Supreme Court set forth specific requirements for the administration of trust funds. These include:

- Funds shall be kept separate and apart from personal accounts
- An account ledger or the equivalent shall be maintained for each person or entity for whom monies have been received in trust.

The Rules of Criminal Procedure, Rule 26.12: Fines and Restitution, state that a restitution payment shall be made to the court. In addition, ARS §44-313 and §44-303 state that funds that are unclaimed for more than five years after becoming distributable are presumed abandoned and are subject to the custody of the state as unclaimed property.

Trust Account Review

PD has recently developed policies and procedures relating to the administration of the trust fund account. The procedures require that the account's monthly bank statement be reconciled. Our review determined that disbursements made from the account were appropriately approved and had proper supporting documentation and that duties were adequately segregated.

We also found that funds from office personnel were commingled with the trust fund and used to pay for non-client related expenditures. The PD office is aware of the occurrences and discontinued the practice in December 1997. We also noted that restitution payments, totaling \$12,000, were channeled through the client trust fund. According to the Arizona Rules of Criminal Procedure, restitution payments are to be paid directly to the Court.

The current trust fund balance consists of funds from eight individuals. Six of the eight accounts date back to the late 1980's and early 1990's. These funds are subject to ARS Title 44, Chapter 3: Uniform Unclaimed Property Act, and should be turned over to the state. PD's recent efforts to locate the owners of the monies have been unsuccessful. PD staff apparently were not aware of all of the requirements related to administering the trust fund.

The department utilizes five separate methods to administer the fund; an Excel ledger, a manual ledger, a detailed subledger, the checkbook itself, and a monthly reconciliation form. However, determining which clients' accounts that make up the current fund balance is difficult. This process is somewhat inefficient and can be streamlined.

Recommendation

PD should:

- A. Ensure that only client-related transactions are processed through the trust fund
- B. Contact the Treasurer's Office to determine steps to escheat the unclaimed monies to the State of Arizona
- C. Prepare one detailed client-subsidary ledger that reconciles in total to the bank statement each month.

Issue 4 Attorney Licenses

Summary

Attorneys hired by the PD office report their status as members of the State Bar of Arizona (Bar) at the time of hire. The PD office relies on Bar determinations when verifying attorneys' reported information relating to licenses, misconduct charges, and sanctions. This information is reviewed annually in conjunction with attorney license renewals and Bar dues payments. PD procedures appear to be adequate to ensure compliance with the attorney license requirements, as stipulated by the Bar and the courts.

Applicable Requirements

ARS require the Public Defender to be an attorney in good standing in the state of Arizona. The Arizona Rules of Court further require that all persons licensed in the state to engage in the practice of law must be active members of the State Bar of Arizona.

Attorney Licenses Verification

We selected a sample of 25 PD attorneys to test the office's compliance with the above requirements. We noted the following:

- All attorneys reviewed are licensed to practice law in Arizona
- All attorneys reviewed are in good standing with the State Bar of Arizona
- None of the test sample attorneys had a record of public disciplinary actions
- A number of attorneys reviewed had inconsequential complaints filed, which resulted in no disciplinary actions taken.

Recommendation

None, for informational purposes only.

Issue 5 Program Change Controls

Summary

PD has not developed a formal process to ensure that all program changes are properly authorized, tested, and approved by the requestor. Also, the programmer making a change is responsible for moving the change into production. This same person has database administrator responsibilities, which according to best practices, should be performed by a different individual. This security risk is compounded by a lack of staff backup, which could negatively impact service continuity. These control weaknesses increase the risk that improper program changes could be implemented. PD should adopt a formal program change control process, ensure that critical IT job duties are properly segregated, and establish backup for key technology positions.

Applicable Requirements

The GAO Federal Information System Controls Audit Manual Section 3.3 provides that “Establishing controls over the modification of application software programs help to ensure that only authorized programs and authorized modifications are implemented. This is accomplished by instituting policies, procedures, and techniques that help make sure that all programs and program modifications are properly authorized, tested, and approved.”

Weaknesses Noted

PD has not developed a formal change control process for its Client Records Management System to ensure that all program changes are properly authorized, tested, and approved by the requestor. Also, the programmer making the change is responsible for moving the change into production. This same person has database administrator responsibilities, which according to best practices, should be performed by a different individual. This security risk is further compounded by a lack of backup for this key technology position.

The lack of formal change control procedures and inadequately segregated duties increase the risk that improper program changes could be implemented. Inadequate backup for key technology positions could negatively impact service continuity.

Recommendation

PD should:

- A. Adopt a formal program change control process to ensure that program changes are properly authorized, tested, and approved by the requestor.
- B. Ensure that critical technology job duties are properly segregated.
- C. Ensure that backup exists for key technology positions through cross-training, increased supervision, and/or increasing staff.

Issue 6 User Access Controls

Summary

User access to the PD's Client Records Management System appears to be adequately restricted based on current job responsibilities. The PD also has a security policy that covers confidentiality of data, as well as, provides adequate protection and composition of passwords.

Adequate Security

Results of our testing showed that user access to CRMS is adequately restricted. Additionally, the PD security policy appears to comply with the requirements of County Policy A1605A. Proper access controls curtail insider fraud. A user cannot easily steal or change information from confidential files or databases without access rights.

Recommendation

None, for informational purposes only.

Issue 7 Disaster Recovery Planning

Summary

The PD does not have a documented and tested disaster recovery plan to recover its systems in the event of a disaster or extended system outage due to hardware or software problems. In addition, system backup tapes were not rotated off-site when we began our audit. However, action was taken to correct this situation during the audit. The office does not have assurance that it can recover its systems timely to prevent potential business interruptions. PD should develop and document a disaster recovery plan and test the plan at least annually.

Applicable Requirements

The Federal Information System Controls Audit Manual (FISCAM) states that “Departments should establish procedures to protect information resources and minimize the risk of unplanned interruptions and develop a plan to recover critical operations if interruptions occur.” Routinely copying data files and software and securely storing these files at a remote location are usually the most cost-effective actions that an entity can take to mitigate service interruptions.

Lacking Disaster Recovery Plan

PD does not have a documented and tested disaster recovery plan to recover its systems in the event of a disaster or extended system outage due to hardware or software problems. Backup tapes were stored in the Information Center Manager’s office near the computer room. However, arrangements were made during the audit to store the backup tapes off-site at the Appeals Division of the PD located at 411 N. Central Avenue. A two-drawer locking file cabinet was being placed in the Telecom storage closet where the backup tapes will be stored. We commend management for their prompt attention to this matter.

However, without a documented and tested disaster recovery plan, the PD does not have assurance that the office can recover its systems in a timely manner, which increases the risk of business interruption.

Recommendation

The PD should develop and document a disaster recovery plan to recover its systems in the event of a disaster. The plan should be tested at least annually and updated as changes occur.